

Utah Mining Association

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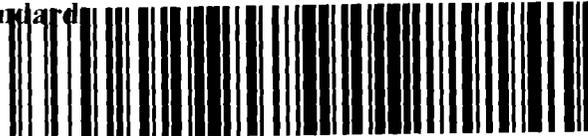
[VIA E-MAIL WMOELLMER@UTAH.GOV]

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DIVISION OF
WATER QUALITY

Dr. William Moellmer
Utah Division of Water Quality
288 North 1460 West
PO Box 144870
Salt Lake City, UT 84116-4870

**Re: Proposed Water Quality Standards - Comments on R317-2
Great Salt Lake Selenium Standard**



DWQ-2008-001414

Document Date: 08/19/2008

Dear Dr. Moellmer:

The Utah Mining Association has reviewed the July 15, 2008 rulemaking revisions to the water quality standards and submits the following comments focused on: (1) the proposed site-specific selenium standard for the Gilbert Bay region of Great Salt Lake (12.5 mg/kg in bird eggs); and (2) the proposed selenium standard assessment methodology.

The Utah Mining Association was founded in 1915, to be the voice of Utah's mining industry. It is one of the oldest and most prestigious business associations in Utah. We support and promote the mining, and mineral industry and other related industries within the State of Utah. Our membership includes over 100 mining and supplier companies that employ thousands of Utah's workers, and in 2007 our industry accounted for almost half of the state's nearly \$8 billion in exports.

I. Proposed Selenium Standard

The Utah Mining Association fully supports the selenium standard setting process outcome, and encourages adoption of the proposed standard for the Gilbert Bay region of Great Salt Lake – 12.5 mg/kg in bird eggs. This selenium egg-based standard is based on recommendations from the Great Salt Lake Water Quality Steering Committee and Science

Panel. The proposed bird egg-based standard relies on multiple layers of conservative assumptions and is based on lower effect concentrations than those utilized by EPA for developing most other national water quality criteria. Additionally, the proposed standard reflects a well documented science-based concentration that ensures protection of the beneficial uses of the Great Salt Lake.

The UMA further understands that one purpose of a triennial review is to provide a regulatory mechanism for evaluating and, if necessary, revising water quality standards. As such, the proposed selenium standard will always be subject to scientific scrutiny and, if necessary, can be modified in the future to reflect new and relevant information.

II. Proposed Selenium Standard Assessment Methodology

The Utah Mining Association has significant concerns with the proposed selenium standard assessment methodology. UMA recognizes and supports the view that ongoing monitoring of the Great Salt Lake will allow regulators and the public to closely track the water quality of the lake enabling timely responses to any data trends of concern. A scientifically based, well-crafted monitoring plan is essential. However, UMA does not believe that the proposed assessment methodology meets this essential need for a number of reasons as set forth below.

- The Proposed Assessment Methodology is Arbitrary.

As proposed, the assessment methodology bases regulatory responses on arbitrarily selected thresholds. In fact, the suggested management levels would trigger actions at conditions that the majority of the Science Panel believe pose no ecological concern.

- The Proposed Assessment Methodology Would Create An Arbitrary De Facto Second Standard.

As proposed, the assessment methodology would cap point source discharges at a number far below the above-referenced well-reasoned, scientifically supported selenium egg-based water quality standard. The cap on point source discharges would create a de facto "second standard" that would essentially replace the years of scientific study that resulted in the proposed selenium egg-based water quality standard promulgation. It may even preclude reliance on trading and other mechanisms that could effectively limit selenium loading to the Great Salt Lake should those reductions ever be necessary.

- The Assessment Methodology Proposes Potentially Ineffective Responses.

The information obtained to date indicates that capping point source discharge loadings to the Great Salt Lake may be ineffective, since they comprise less than a third of all selenium that goes into the lake. In short, the proposed methodology does not adequately account for the real conditions in the Great Salt Lake or the necessary data to assess conditions in the lake. The UMA encourages the collection of information that will allow for a critical, science-based review of lake conditions, and water quality trends rather than merely reactive and unstudied response levels.

- The Assessment Methodology Proposes an Approach Fundamentally Inconsistent with Other Water Quality Standard Requirements without Justification.

As part of this proposed rulemaking, the Utah Water Quality Division has specified thresholds for conducting Level II antidegradation reviews based on percentage of available assimilative capacity. The Division has proposed an alternative threshold in their selenium assessment methodology, but the rationale for doing so has not been fully explained or justified. The Division should reconsider creating alternative thresholds for the Great Salt Lake where not justifiable to avoid program implementation in a piecemeal, arbitrary fashion. Similarly, the antidegradation program as it currently exists and as proposed, does not require Level II review for existing discharge permits upon reissuance. In contrast, the proposed selenium assessment methodology would require Level II review for existing permit reissuance. There has been no substantive explanation for deviating from the present antidegradation requirements. Moreover, any "more stringent" applications of the federal water quality program would be inconsistent with Utah environmental law requirements to be no more stringent than the federal program.

- The Proposed Assessment Methodology Fails to Incorporate Adaptive Management.

The Proposed Assessment Methodology would establish a threshold for conducting the Level II antidegradation review -- which as indicated above we believe is flawed -- but provides no mechanism for feedback aimed at implementing the findings of that review, including information identified as part of the economic analysis required for such a review. The proposed approach could, therefore, result in arbitrary and costly responses to changing Great Salt Lake conditions.

William Moellmer
August 19, 2008
Page Four

As identified above, the triennial review provides great opportunity for ongoing scrutiny of water quality conditions in the Great Salt Lake. The Utah Mining Association believes a selenium standard assessment methodology should be designed to create a specific, tiered monitoring plan that will ensure data exist to make clear, defensible decisions. Accordingly, the UMA believes that a monitoring plan may be best adopted as part of guidance, issued after stakeholder participation that would maintain the Division of Water Quality's flexibility to best respond to changing Great Salt Lake conditions.

Sincerely,

David A. Litvin
President

cc: Walt Baker, Utah Division of Water Quality
UMA Environmental Committee
Kelly Payne, Kennecott Utah Copper
David Bird, Parsons Behle & Latimer
Lisa Kirschner, Parsons Behle & Latimer
Tom Bingham, Utah Manufacturers Association
Lee Peacock, Utah Petroleum Association
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